

DOCKET FILE COPY ORIGINAL

RECEIVED

JAN 22 1993

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the matter of)
)
Request for Comments)
In Connection With Sections)
312(a)(7) and 315 of the)
Communications Act)

MM Docket No. 92-254

TO: The Commission

COMMENTS OF PLANNED PARENTHOOD
FEDERATION OF AMERICA, PLANNED
PARENTHOOD OF THE ROCKY MOUNTAINS
AND PLANNED PARENTHOOD OF GREATER IOWA

Planned Parenthood Federation of America, Planned
Parenthood of the Rocky Mountains and Planned Parenthood
of Greater Iowa ("Planned Parenthood") hereby submit
comments in the above-captioned Federal Communications
Commission (the "Commission") proceeding soliciting
comments on the proper interpretation of Sections
312(a)(7) and 315(a) of the Communications Act of 1934,
as amended (the "Communications Act" or the "Act").

Planned Parenthood requests the Commission to
allow broadcast stations to refuse to air advertisements
which provide private information concerning persons
unrelated to a political campaign who perform family
planning or abortion services, because such broadcasts
are not on "behalf of a candidacy", are not consistent
with Congress' intent in enacting Section 312(a)(7), and

No. of Copies rec'd 046
List A B C D E

incite conduct which is inconsistent with federal and state law.

I. INTRODUCTION

A. The Parties.

1. Planned Parenthood Federation of America, a federation of 170 not-for-profit corporations operating more than 900 clinics in 49 states and the District of Columbia, is the nation's oldest and largest voluntary reproductive health care organization. Many of the clinics provide abortion and related services.

2. Planned Parenthood of the Rocky Mountains and Planned Parenthood of Greater Iowa are two separately incorporated affiliates of Planned Parenthood Federation of America located in Colorado and Iowa. Both affiliates operate several family planning clinics throughout their respective regions, and both also operate clinics that provide abortion services.

3. Nationwide, Planned Parenthood's 22,000 volunteers and staff members meet the family planning needs of more than four million Americans each year.

B. Background of Proceeding.

4. On October 30, 1992, the Commission issued a "Request for Comments" (the "Public Notice") "on all

issues concerning what, if any, right or obligation a broadcast licensee has to channel political advertisements that it reasonably and in good faith believes are indecent."¹ The Public Notice also solicited comments on the broader issue of whether 312(a)(7) and 315(a) should be interpreted to provide broadcasters discretion in airing political advertising which might not qualify as "indecent", but which nonetheless might be offensive or contrary to the public interest.

C Factual Background.

5. The Public Notice was issued in the context of requests for declaratory ruling filed with the Commission during the 1992 election campaign season, when various candidates for federal elective office purchased advertising time from television broadcast station licensees for the purpose of airing graphic depictions of dead or aborted and bloodied fetuses or fetal tissue.

6. In addition to such advertising, during the 1992 election campaign at least one candidate for federal political office also aired offensive

¹ In the Matter of Petition for Declaratory Ruling Concerning Section 312(a)(7) of the Communications Act, Request for Comments, 7 FCC Rcd. 7297, ¶ 3 (1992).

advertising which invaded the privacy of, and invited members of the public to harass, persons unrelated to the political campaign in connection with which the advertisement was broadcast, through the broadcast of the names, likenesses and home addresses of physicians who provide abortion services at Planned Parenthood facilities.

7. For example, in late October and early November of 1992, an advertisement on behalf of Presidential Candidate Howard Phillips was broadcast on WOI-TV, an ABC affiliate in Des Moines, Iowa.² The advertisement featured a series of pictures of dead and aborted fetuses while a voice stated:

In his paid television commercials presidential candidate Howard Phillips has shown graphic, grizzly pictures of unborn children whose lives were extinguished intentionally with premeditation by hired killers described in the media as abortionists. Well it is time to end the cover up. Here are some of the names, addresses and faces of the abortionists who kill for money and who commit their grizzly deeds in our state.

The screen then showed the picture, name and home address of a former Medical Director of Planned Parenthood of Greater Iowa, while the narrator stated:

² See Affidavit of Jill P. June, President of Planned Parenthood of Iowa, attached as Exhibit 1.

Howard Phillips urges you to contact these baby killers and urge them to mend their ways.

The screen then changed to show the picture, name and home address of the current Medical Director of Planned Parenthood of Greater Iowa, while the narrator stated:

A vote for Howard Phillips is a vote to prosecute the baby killers for premeditated murder.³

8. Planned Parenthood understands that other candidates for federal office sought to air similar advertisements providing names, likenesses and home addresses and telephone numbers of private citizens during the 1992 election season, but ultimately did not do so because of a lack of funds.

II. COMMENTS

9. The Commission has indicated its intention to address the proper construction of 312(a)(7) in the context of non-indecent advertisements which are nonetheless offensive. Planned Parenthood accordingly urges the Commission to address in this proceeding the question of whether broadcast licensees must provide mandatory access to their facilities for the unauthorized broadcast of the names, likenesses and home

³ A tape of the advertisement as aired by WOI-TV is provided as an exhibit to the attached Affidavit of Jill P. June.

addresses and telephone numbers of private individuals unrelated to any political campaign when the likely effect of such a broadcast is the intimidation of those individuals. Because this issue will arise on short notice in future election campaigns, leaving little time for careful deliberation, it is imperative that the Commission provide guidance to licensees at this time. Otherwise, the exigencies of election and broadcast deadlines will deny the Commission the opportunity to consider thoughtfully the issue and will deny licensees much-needed guidance.⁴

10. For the reasons set forth below, Planned Parenthood urges the Commission to clarify that 312(a)(7) does not require broadcast licensees to provide access to their facilities for the unauthorized broadcast of private information about persons unrelated to the political campaign in connection with which the advertisement is offered, with the likely effect of intimidation of such citizens in connection with their pursuit of lawful activities.

⁴ Alternatively, Planned Parenthood requests that the Commission issue a further "Request for Comments" on the issue of whether 312(a)(7) requires licensees to provide access to their facilities for the unauthorized broadcast of such material.

**A. The Commission Has Broad
Discretion In Construing
Section 312(a)(7)**

11. In adopting Section 312(a)(7) of the Communications Act Congress intended to further political debate by "giv[ing] candidates for public office greater access to the media so that they may better explain their stand on the issues and thereby more fully and completely inform the voters." S. Rep. No. 92-96, 92d Cong., 1st Sess. 20 (1971). But Congress did not intend to permit candidates for federal office to enjoy completely unrestricted use of broadcast facilities. Congress employed the words "reasonable" and "on behalf of his candidacy" to limit the uses a candidate may make of broadcast facilities.⁵

12. In CBS, Inc. v. F.C.C., 453 U.S. 367 (1981) (in which the Supreme Court upheld the Commission's interpretation of 312(a)(7)), the Supreme Court recognized the limiting effect of those words. The Court stated, "Section 312(a)(7) creates a limited right to 'reasonable' access that pertains only to legally

⁵ The words "reasonable" and "on behalf of his candidacy" must be interpreted as limiting the use a candidate may make of broadcast facilities. Otherwise those words would be meaningless. Statutes must not be construed in a manner that renders any portion of the statute meaningless. See Reiter v. Sonotone, 442 U.S. 330, 339 (1979) ("In construing a statute we are obliged to give effect, if possible, to every word Congress used.")

qualified federal candidates and may be invoked by them only for the purpose of advancing their candidacies once a campaign has commenced." Id. at 396 (latter emphasis supplied).

13. Congress's repeated use of the word "reasonable" in 312(a)(7) also indicates the Commission's wide discretion in interpreting and implementing 312(a)(7). The Supreme Court has stated:

Although Congress provided in § 312(a)(7) for greater use of broadcasting stations by federal candidates, it did not give guidance on how the Commission should implement the statute's access requirement. Essentially, Congress adopted a "rule of reason" and charged the Commission with its enforcement.

Id. at 387. Accordingly, the Commission has broad discretion to interpret 312(a)(7) in a manner so as to ensure that a candidate's use is "reasonable" and "on behalf of his candidacy."

**B. Broadcasting The Names, Likenesses
And Home Addresses And Telephone
Numbers Of Abortion Services Providers
Is Not A Use On Behalf Of A Candidacy**

14. In construing Section 312(a)(7), the Commission should first examine the plain language of the statute. The plain language of the statute requires that the use be "on behalf of [a] candidacy." With that provision, Congress ensured that candidates would not be

able to use their right of access to further interests other than their own election.

15. While it may not always be clear when an advertisement is "on behalf of a candidate", broadcasts such as the Iowa advertisement which feature the names, photographs and home addresses and telephone numbers of abortion services providers clearly fall outside the scope of the provision. Such broadcasts do not solicit support for a political candidate or explain the candidate's stand on campaign issues. Instead, they harass those who perform safe, legal abortions and invade their privacy.

16. The television advertisement by Howard Phillips (Exhibit A to Affidavit of Jill P. June) provides an apt illustration. In his advertisement Phillips "urges [viewers] to contact these baby-killers and urge them to mend their ways." That statement does not solicit support for Phillips' candidacy or explain Phillips' stand on the issues of the campaign. Instead, Phillips asks viewers to harass the private citizens depicted in the advertisement.

17. Licensees should not be required to provide mandatory access to persons to air material which invades the privacy of private citizens unrelated to a political campaign, and has the likely effect of inciting viewers to harass such persons. Such a use

cannot possibly be a use "on behalf of [a] candidacy" under Section 312(a)(7).

C. **Broadcasting The Names, Likenesses
And Home Addresses And Telephone
Numbers Of Abortion Services
Providers Is Contrary To Congress's
Purpose In Enacting Section 312(a)(7)**

18. In construing 312(a)(7) the Commission is required to effectuate the intent of Congress. Norfolk & Western Ry. Co. v. Am. Train Dispatchers Assn., ___ U.S. ___, 111 S. Ct. 1156, 1163 (1991). Congress stated that its purpose in enacting 312(a)(7) was to "give candidates for public office greater access to the media so that they may better explain their stand on the issues and thereby more fully and completely inform the voters." S. Rep. No. 92-96, 92d Cong., 1st Sess. 20 (1971).

19. Construction of 312(a)(7) as requiring licensees to provide access to broadcast facilities for the purpose of intimidating abortion services providers is directly contrary to Congress's purpose in enacting that statute. Such "election" programming does not promote the discussion of issues underlying the debate over abortion rights; to the contrary, it merely subjects private citizens to harassment and intimidation and attempts to prevent them from speaking out.

**D. Broadcasting The Names, Likenesses And
Home Addresses And Telephone Numbers Of
Abortion Services Providers Is Contrary To
Interests Protected By Federal And State Law**

20. It is a settled principle of statutory construction that statutes should not be construed in a manner that would cause them to conflict with other statutes. Morton v. Mancari, 417 U.S. 535, 551 (1974). Requiring licensees to provide facilities for broadcasting advertisements soliciting and facilitating the harassment of private individuals would be contrary to interests recognized by law. See, e.g., 47 U.S.C. § 223 (1991) (prohibiting harassing phone calls) and 42 C.F.R. § 59.15 (1991) (prohibiting disclosure of information identifying individual recipients of federally-funded family planning services). Such broadcasts also raise significant invasion-of-privacy concerns under state law. Indeed, the broadcasting of ads soliciting and facilitating the harassment of abortion services providers is contrary to the public interest and would, therefore, conflict with § 307(a) of the Communications Act.⁶

⁶ The Commission has recognized that the broadcasting of material that results in the harassment of private citizens is contrary to the public interest. In Contests and Promotions, 6 R.R.2d 671 (1966) (since eliminated pursuant to the Commission's effort to streamline Commission "regulatory underbrush"), the Commission found that a radio contest that "led listeners to choose names at random from the telephone
[Footnote continued on next page]

21. If there is any doubt as to the illegal and offensive nature of the acts which broadcasts such as the Iowa advertisement can incite, one need only consult the history in this country of harassment of those who perform legal abortions. Those activities include destruction of family planning clinic property, telephone campaigns designed to tie up family planning clinic phone lines, the making of bogus appointments in order to prevent legitimate patients from making appointments, fire-bombing of clinics, blockading clinics, extortion, and intimidation of abortion services providers. See Affidavit of Jill P. June, attached as Exhibit 1 (describing harassment of abortion services providers); National Organization For Women v. Scheidler, 968 F.2d 612, 615 (7th Cir. 1992) (describing alleged criminal acts by abortion rights opponents), petition for cert. filed (Nov. 2, 1992); "Abortion Clinic Violence: Oversight Hearings Before the Subcomm. on Civil and Constitutional Rights of the Comm. on the Judiciary, House of Representatives," 99th Cong., 1st and 2d Sess. (1985 and 1986); Grimes, Forrest, Radford and Kirkman, "An Epidemic of Anti-Abortion Violence in

[Footnote continued from previous page]
directory and to call the persons listed at all hours of the day and night, causing great annoyance and effectively blocking use of their telephones for normal purposes" was contrary to the public interest.

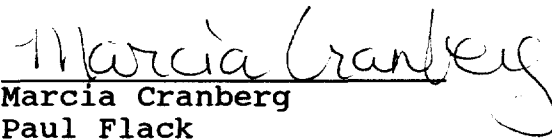
the United States," 165 Am. J. of Obstetrics & Gyn. 1263 (Nov. 1991) (same). Broadcasts of private information concerning those who perform abortions (particularly when the broadcast identifies them as "killers" and urges viewers to contact them at their homes) are likely to elicit similar conduct in violation of law and public policy.

IV. Conclusion

22. The Commission is required to construe Section 312(a)(7) so as to give effect to its plain meaning, further Congress' underlying intent, and avoid an interpretation that is inconsistent with applicable law and policy. For all of these reasons, the Commission should clarify that 312(a)(7) does not require broadcast licensees to provide access to their facilities to broadcast the names, likenesses and home

addresses and telephone numbers of private individuals
unrelated to the political campaign.

Respectfully submitted,


Marcia Cranberg
Paul Flack
Carla J. Foran

ARNOLD & PORTER
1200 New Hampshire Ave
Washington, D.C. 20036
(202) 872-6700

Counsel for Planned
Parenthood Federation
of America, Planned
Parenthood of the
Rocky Mountains, and
Planned Parenthood of
Greater Iowa

January 22, 1993

EXHIBIT 1

AFFIDAVIT

STATE OF IOWA)
) ss.:
COUNTY OF POLK)

I, JILL P. JUNE, being duly sworn, depose and state:

1. I am the President of Planned Parenthood of Greater Iowa ("PPGI"). I have held this position since October, 1985.

2. PPGI provides a range of reproductive services, including counseling, birth control and abortion services. As President, I oversee the operations of all the family planning clinics operated by PPGI, including the hiring and working conditions of both medical and non-medical staff members.

3. Throughout my more than seven years as President of PPGI, I have, on numerous occasions, been harassed and the target of attempted intimidation by abortion rights opponents. This has included picketing and the sending of threatening mail and phone calls to my home and office and personal confrontations on the grounds of PPGI and near my home, as well as in numerous public places such as restaurants, grocery stores and farmers markets. The harassment has included repeated threats to my and my family's physical safety.

4. I have also witnessed and been informed of the harassment and attempted intimidation of various PPGI staff members and their families by abortion rights opponents, including picketing and the sending of threatening mail and phone calls to staff members at PPGI and their homes and places of worship as well as personal confrontations in public places, like shopping malls and restaurants.

5. The abortion rights opponents' harassment of PPGI staff members is a source of deep concern to me, as it affects PPGI's ability to provide family planning services to its clients, poses a constant threat to the physical safety of PPGI's staff members and, thus, threatens PPGI's ability to retain the services of its employees.

6. I know of at least two instances where harassment by abortion rights opponents resulted in the resignation of a PPGI staff member. In one instance, a senior manager resigned after growing concern for the continued safety of her child, who was being harassed at school as a result of her mother's PPGI employment. In the other instance, a physician who provided abortion services who was also a member of the Armed Forces was ordered by his superiors in the military to discontinue his relationship with PPGI after abortion rights opponents complained to the military about his PPGI affiliation.

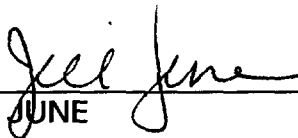
7. I fear that the harassment experienced by PPGI staff members will only increase as a result of programming like that attached as Exhibit A to this affidavit. Exhibit A is a copy of an advertisement broadcast in October and early November 1992 on WOI-TV, an ABC affiliate in Des Moines, Iowa.

8. In the advertisement, Dr. Sue Haskell, the Medical Director of PPGI, and Dr. Herbert Remer, a former Medical Director of PPGI, are identified by name and photograph. In addition, their home addresses are shown in the ad.

9. I have personal knowledge that at least one person associated with Operation Rescue, an organization which engages in violent intimidation and harassment of persons and organizations that provide abortion services, was

instrumental in the production of the ad and oversaw the purchase of broadcast time for its airing. This individual has been arrested on numerous occasions for harassing individuals associated with organizations that provide abortion-related services.

10. I hereby declare, under penalty of perjury, that the foregoing is true and accurate to the best of my knowledge and belief.


JILL P. JUNE

Sworn to before me this 21 day of January, 1993.


NOTARY PUBLIC IN AND FOR THE
STATE OF IOWA